

UNITED STATES DISTRICT COURT  
for the  
District of

Plaintiff )  
v. ) Civil Action No.  
Defendant )

## **WAIVER OF THE SERVICE OF SUMMONS**

To: \_\_\_\_\_  
*(Name of the plaintiff's attorney or unrepresented plaintiff)*

I have received your request to waive service of a summons in this action along with a copy of the complaint, two copies of this waiver form, and a prepaid means of returning one signed copy of the form to you.

I, or the entity I represent, agree to save the expense of serving a summons and complaint in this case.

I understand that I, or the entity I represent, will keep all defenses or objections to the lawsuit, the court's jurisdiction, and the venue of the action, but that I waive any objections to the absence of a summons or of service.

I also understand that I, or the entity I represent, must file and serve an answer or a motion under Rule 12 within 60 days from \_\_\_\_\_, the date when this request was sent (or 90 days if it was sent outside the United States). If I fail to do so, a default judgment will be entered against me or the entity I represent.

Date:

*Signature of the attorney or unrepresented party*

*Printed name of party waiving service of summons*

*Printed name*

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### Address

---

*E-mail address*

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*Telephone number*

## **Duty to Avoid Unnecessary Expenses of Serving a Summons**

Rule 4 of the Federal Rules of Civil Procedure requires certain defendants to cooperate in saving unnecessary expenses of serving a summons and complaint. A defendant who is located in the United States and who fails to return a signed waiver of service requested by a plaintiff located in the United States will be required to pay the expenses of service, unless the defendant shows good cause for the failure.

“Good cause” does *not* include a belief that the lawsuit is groundless, or that it has been brought in an improper venue, or that the court has no jurisdiction over this matter or over the defendant or the defendant’s property.

If the waiver is signed and returned, you can still make these and all other defenses and objections, but you cannot object to the absence of a summons or of service.

If you waive service, then you must, within the time specified on the waiver form, serve an answer or a motion under Rule 12 on the plaintiff and file a copy with the court. By signing and returning the waiver form, you are allowed more time to respond than if a summons had been served.

1 Honorable \_\_\_\_\_  
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8

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

9 DEREK TUCSON, ROBIN SNYDER,  
10 MONSIEREE DE CASTRO, and ERIK  
11 MOYA-DELGADO,

12 Plaintiffs,

13 v.  
14 CITY OF SEATTLE, ALEXANDER  
15 PATTON, TRAVIS JORDAN, DYLAN  
16 NELSON, JOHN DOES (#1-4), and JANE  
17 DOES (#1-2),

18 Defendants.

19 No. [Cause Number]

20 COMPLAINT

21 JURY TRIAL REQUESTED

22 I. INTRODUCTION

23 1.1 This is a civil rights action brought under 42 U.S.C. § 1983 for violations of  
24 Plaintiff's rights under the First, Fourth, and Fourteenth Amendments.

25 1.2 Seattle Municipal Code (SMC) 12A.08.020 is unconstitutional on its face and as  
26 applied to Plaintiffs. This ordinance purports to criminalize any writing on any surface not  
27 owned by the writer. Even if the writer had the owner's express permission or reasonably  
believed the writing was lawful, police can still arrest the writer—and only later, at trial, could  
the writer present the owner's express permission or the writer's reasonable belief as an  
“affirmative defense.” SMC 12A.08.020 makes no allowance whatsoever that the owner  
impliedly authorized the writing. Thus, the ordinance sweeps within its criminal ambit an  
inordinate degree of entirely innocent and constitutionally protected expressive activities,

COMPLAINT - 1

No. [Cause Number]

19487.00001 ph232301

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1 affording police an astonishing degree of discretion regarding when, and against whom, to  
 2 enforce it.

3       1.3     In this case, Defendants deployed that discretion to retaliate against criticisms  
 4 written by Plaintiffs, four peaceful protesters who Defendants arrested for writing political  
 5 messages in ordinary charcoal and children's sidewalk chalk in an open and traditional public  
 6 forum. Defendants selectively enforced SMC 12A.08.020 against Plaintiffs' criticisms while  
 7 tolerating politically neutral and pro-government chalking. Such viewpoint discrimination, too,  
 8 the Constitution does not allow.

9       1.4     The arrests began on the evening of January 1, 2021, outside the Seattle Police  
 10 Department (SPD) East Precinct when Plaintiff Derek Tucson wrote the words "peaceful protest"  
 11 on a concrete wall that the Defendant City of Seattle built over the public sidewalk around the  
 12 precinct building. Plaintiff Tucson wrote this political message with a piece of charcoal found on  
 13 the ground near the wall. Although the writing caused no damage to the wall, and would wash  
 14 off in the rain, Defendants arrested Plaintiff Tucson for the sole reason that he wrote this political  
 15 message. When several bystanders – the other three Plaintiffs in this case – responded by writing  
 16 similar messages in charcoal and children's sidewalk chalk, Defendants arrested them too.



1.5 After these retaliatory arrests, Defendants booked all four Plaintiffs into the King County Jail in violation of Covid-19-related booking policies that prohibited booking people for non-violent offenses. This occurred because, in December 2020, the Seattle Police Department and Mayor's Office targeted non-violent protesters for retaliation in the form of an exception to these health and safety related booking policies. As a result, political protesters suspected of non-violent offenses, including Plaintiffs, were booked into the Jail during a pandemic while similarly situated non-political detainees were not booked.

1.6 At stake is the basic question of whether Seattle residents can peacefully criticize their government officials in the public forum free from retaliation by those officials. Defendants' actions, practices, and policies in this case stand in stark contrast to the society of free and vibrant expression that our Constitution stands for and protects.

## II. PARTIES

2.1 Plaintiff Derek Tucson is a resident of Seattle, Washington.

2.2 Plaintiff Robin Snyder is a resident of Seattle, Washington.

2.3 Plaintiff Monsieree de Castro is a resident of Seattle, Washington.

2.4 Plaintiff Erik Moya-Delgado is a resident of Seattle, Washington.

2.5 Defendant City of Seattle (“City”) is a municipal corporation formed under the laws of the State of Washington and acting under color of state law.

2.6 At all times relevant, Defendant Alexander Patton was employed by Defendant City as a police officer with the Seattle Police Department (“SPD”). He is sued in his individual and official capacities. He acted at all relevant times under color of state law.

2.7 At all times relevant, Defendant Travis Jordan was employed by Defendant City as a police officer with SPD. He is sued in his individual and official capacities. He acted at all relevant times under color of state law.

2.8 At all times relevant, Defendant Dylan Nelson was employed by Defendant City as a police officer with SPD. He is sued in his individual and official capacities. He acted at all relevant times under color of state law.

1           2.9    At all times relevant, Defendants John Does #1 - #4 and Jane Doe #1 were  
 2 employed by Defendant City as police officers with SPD. They are sued in their individual and  
 3 official capacities. They acted at all relevant times under color of state law.

4           2.10   At all times relevant, Defendant Jane Doe #2 was a policy maker for the  
 5 Defendant City of Seattle. She is sued in her individual and official capacity. She acted at all  
 6 relevant times under color of state law.

### 7                   **III. JURISDICTION AND VENUE**

8           3.1    This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343.

9           3.2    Venue is proper under 28 U.S.C. § 1391 because the events giving rise to these  
 10 claims occurred in this judicial district.

### 11                   **IV. FACTS**

12           4.1    This case concerns Defendants' seizure of all four Plaintiffs on the night of  
 13 January 1 through January 2, 2021.

14           4.2    Sometime prior to January 1, 2021, the Defendant City erected a temporary  
 15 concrete wall around SPD's East Precinct building at 1519 12<sup>th</sup> Avenue, Seattle, WA. The  
 16 temporary wall, made of large concrete "eco-blocks" stacked to a height of approximately six  
 17 feet and topped with a chain link fence, obstructed the public's access to the sidewalk along Pine  
 18 Street and 12<sup>th</sup> Avenue. Sometime after January 1, 2021, the Defendant City removed the  
 19 temporary wall.

20           4.3    At approximately 10:30 p.m. on January 1, 2021, four uniformed officers  
 21 employed by Defendant City emerged from the East Precinct to arrest Plaintiff Derek Tucson  
 22 from a group of approximately four or five people gathered on and near the public sidewalk. The  
 23 basis of the arrest was Defendants' suspicion that Plaintiff Tucson wrote the words "peaceful  
 24 protest" in ordinary charcoal on the temporary "eco-block" wall. Plaintiff Tucson did not consent  
 25 to the arrest, and repeatedly asked why he was being arrested, but he did not resist.

26           4.4    Two officers physically seized Plaintiff Tucson. Public records indicate that  
 27 Defendant Patton was the "arresting officer." Video of the arrest, compared with publicly

1 available images of Defendant Patton, appears to confirm that Defendant Patton was one of the  
 2 two officers who seized Plaintiff Tucson. Public records do not identify the second officer,  
 3 whose name is not presently known to Plaintiffs. Video footage shows this unidentified officer,  
 4 John Doe #1, to be male, white, bald, and wearing a dark blue facial covering.

5       4.5     The charcoal writing of “peaceful protest” was inherently temporary, could have  
 6 been wiped off with little effort, would wash away in the rain, and caused no damage to the  
 7 function or aesthetic value of the temporary concrete “eco-block” wall.

8       4.6     Members of the public who were nearby during Plaintiff Tucson’s arrest,  
 9 including Plaintiff Snyder, verbally protested the arrest and repeatedly demanded an explanation.  
 10 Plaintiff Tucson’s arrest, and each subsequent arrest of the other Plaintiff’s, had the effect of  
 11 angering witnesses and escalating tension and rhetoric.

12       4.7     After Plaintiff Tucson was taken inside the precinct building, members of the  
 13 public wrote additional messages on the temporary wall in ordinary charcoal and children’s  
 14 sidewalk chalk.

15       4.8     The messages were political in nature and included the phrases “BLM” (“Black  
 16 Lives Matter”), “FTP” (“Fuck the Police”), “Free DT,” “Free Robin,” “Free them all,” “Abolish  
 17 SPD,” “Kill KKKops,” “Killers →” (arrow pointing at the precinct), “New Year No New  
 18 Names,” and “Fuck SPD.”

19       4.9     All of these political messages were written in ordinary charcoal or children’s  
 20 sidewalk chalk, inherently temporary, could have been wiped off with little effort, would wash  
 21 away in the rain, and caused no damage to the function or aesthetic value of the temporary  
 22 concrete “eco-block” wall.

23       4.10    Approximately four minutes after arresting Plaintiff Tucson, five uniformed  
 24 officers employed by Defendant City appeared, two emerging from a marked police vehicle and  
 25 three from the precinct building, to arrest Plaintiff Snyder on suspicion of having written one or  
 26 more of the political messages identified above in paragraphs 4.8 and 4.9. Plaintiff Snyder did  
 27 not consent to, but did not resist, the arrest.

1       4.11 Two of the officers, one from the vehicle and one from the precinct, physically  
 2 seized Plaintiff Snyder. Although public records indicate that Defendant Patton was the  
 3 “arresting officer” for Plaintiff Snyder, video footage of the arrest does not appear to show  
 4 Defendant Patton participating in the seizure. Instead, Plaintiff Snyder appears to have been  
 5 seized by Defendant Nelson, whose sworn narrative admits his participation in the arrest. The  
 6 name of the second officer who seized Plaintiff Snyder is presently unknown to Plaintiffs. Video  
 7 footage shows this unidentified officer, John Doe #2, to be male, white, dark haired, and wearing  
 8 a lighter-blue facial covering.

9       4.12 Approximately twelve minutes after Plaintiff Snyder was arrested and taken  
 10 inside the precinct, ten uniformed officers employed by Defendant City appeared, two emerging  
 11 from a police vehicle and eight from the precinct, to arrest Plaintiff de Castro on suspicion of  
 12 having written one or more of the political messages identified above in paragraphs 4.8 and 4.9.  
 13 Plaintiff de Castro did not consent to, but did not resist, the arrest.

14       4.13 Two of the officers, one from the vehicle and one from the precinct, physically  
 15 seized Plaintiff de Castro. Again, public records indicating Defendant Patton’s role as the  
 16 “arresting officer” appears to be inconsistent with video footage of the officers who seized  
 17 Plaintiff de Castro. Rather, Defendant Nelson’s sworn narrative, in which he admits to arresting  
 18 Plaintiff de Castro, appears to be consistent with the video. The name of the second officer who  
 19 seized Plaintiff de Castro is presently unknown to Plaintiffs. Video footage shows this  
 20 unidentified officer, John Doe #3, to be male, white, light haired, and wearing a yellow facial  
 21 covering.

22       4.14 Approximately eight minutes after Plaintiff de Castro was arrested and taken  
 23 inside the precinct, approximately eleven officers employed by Defendant City appeared, three  
 24 emerging from the precinct building and approximately eight from four police vehicles, to arrest  
 25 Plaintiff Moya-Delgado on suspicion of writing one or more of the political messages identified  
 26 above in paragraphs 4.8 and 4.9 as well as part of a song lyric (“*Always some pig there to beat  
 27 me*” in the style of Naked Eye’s “*Always something there to remind me*”) on the brick wall of the

1 precinct building in children's sidewalk chalk. The writing of the lyric, like the other political  
 2 messages, was inherently temporary, could have been wiped off with little effort, would wash  
 3 away in the rain, and caused no damage to the function or aesthetic value of the precinct.

4 Plaintiff Moya-Delgado did not consent to, but did not resist, the arrest.

5 4.15 All three of the officers who emerged from the precinct physically seized Plaintiff  
 6 Moya-Delgado. Yet again, arrest paperwork indicating Defendant Patton's role as Plaintiff  
 7 Moya-Delgado's "arresting officer" appears to be inconsistent with video footage of the arrest.  
 8 The identities of the three seizing officers, which are not indicated in public records, are  
 9 presently unknown to Plaintiffs. Video footage shows one of the first of these three unidentified  
 10 officers to likely be John Doe #1; the second, John Doe #4, to be male, white, dark-haired, with a  
 11 dark gray facial covering; and the third, Jane Doe #1, to be female, a person of color, dark-  
 12 haired, and wearing a black facial covering.

13 4.16 As a direct and proximate result of the foregoing events, each Plaintiff was seized,  
 14 handcuffed, escorted inside the East Precinct, placed in cold, disorienting, and uncomfortable  
 15 holding cells, and detained for substantial periods of time during which they experienced various  
 16 indignities, physical pain and suffering, and loss of the freedoms of expression, movement, and  
 17 association.

18 4.17 On March 4, 2020, the King County Executive announced that "Correctional  
 19 facilities" will restrict the type of bookings they will accept. Jails will not accept people brought  
 20 in for misdemeanor charges, except for misdemeanor assaults, violations of no contact or  
 21 protection orders, DUIs, sex crimes or other charges which present a serious public safety  
 22 concern." This policy is referred to below as "the County's Covid-19 booking policy".

23 4.18 On January 2, 2021, the offense for which Plaintiffs were arrested was not on the  
 24 list of charges which present a "serious public safety concern" under the County's Covid-19  
 25 booking policy.

1       4.19 The County's Covid-19 booking policy was subject to exceptions, referred to as  
 2 an "override," at the request of law enforcement and local government partners, including SPD  
 3 and Defendant City.

4       4.20 Prior to Plaintiffs' arrest, at least one person employed by SPD at the rank of  
 5 "assistant chief or higher" used their official position to "override" the County's Covid-19  
 6 booking policy so that it did not apply to people arrested during political protests.

7       4.21 Prior to Plaintiffs' arrest, at least one person employed by Defendant City in an  
 8 "executive leadership" position in the Mayor's Office used their official position to "override"  
 9 the County's Covid-19 booking policy so that it did not apply to people arrested during political  
 10 protests.

11       4.22 According to independent inquiry and information, Mr. John Diaz (former  
 12 director of the King County Department of Adult and Juvenile Detention) referred to the  
 13 "executive leadership" official referenced in paragraph 4.21 using she/her/hers. She is sued  
 14 herein as Jane Doe #2.

15       4.23 "Override" of the County's Covid-19 booking policy by the SPD "assistant chief  
 16 or higher" and Jane Doe #2 discriminated against detainees based upon political participation  
 17 and viewpoint by causing those arrested for non-violent offenses in the context of political  
 18 protests to be booked into jail while those arrested for non-violent offenses in non-political  
 19 contexts were not booked.

20       4.24 As a direct, proximate, and foreseeable result of "overriding" the County's Covid-  
 21 19 booking policy by the SPD "assistant chief or higher" and by Defendant Jane Doe #2,  
 22 Plaintiffs were booked into the King County Jail on January 2, 2021 based upon political  
 23 participation and viewpoint.

24       4.25 Booking into the Jail extended the duration, and enhanced the severity, of  
 25 Plaintiffs' seizures: all four Plaintiffs were involuntarily moved from the East Precinct to the  
 26 King County Jail where they were searched, stripped of civilian clothing, dressed in jail garb,  
 27 photographed, fingerprinted, moved from one cold and unsanitary cell to the next, and otherwise

1 subjected to various indignities, physical pain and suffering, and loss of the freedoms of  
 2 expression, movement, and association.

3       4.26   Each Plaintiff was released from the Jail at a different time of day on January 2,  
 4 2021.

5       4.27   According to their sworn statements, Defendants Jordon, Nelson, and Patton each  
 6 independently reviewed and relied upon the elements of Seattle Municipal Code 12A.08.020—  
 7 “Property Destruction” to establish probable cause for arresting Plaintiffs.

8       4.28   SMC 12A.08.020 states: “A person is guilty of property destruction if he or she . . .  
 9 . (2) Writes, paints, or draws any inscription, figure, or mark of any type on any public or private  
 10 building or other structure or any real or personal property owned by any other person.”

11       4.29   SMC 12A.08.020 differs from a related Washington State statute, RCW  
 12 9A.48.090. Although both laws criminalize “writ[ing], paint[ing], or draw[ing] any inscription,  
 13 figure or mark of any type on any public or private building or other structure or any real or  
 14 personal property owned by any other person,” the state statute excludes writing, painting, and  
 15 drawing that occurs with the express permission of the owner. In contrast, the municipal  
 16 ordinance does not require any evidence regarding the property owner’s permission, which is the  
 17 writer, painter, or drawer’s burden to prove during prosecution as an “affirmative defense.”  
 18 Thus, under the plain language of the ordinance, Defendants could arrest and prosecute the  
 19 famous Seattle muralist Ryan “henry” Ward under SMC 12A.08.020 for painting a mural with  
 20 not only the owner’s express permission, but paid commission.

21       4.30.   SMC 12A.08.020 also permits Defendants to arrest and prosecute anyone who  
 22 had a “reasonable belief” that they had the lawful right to write, paint, or draw on someone else’s  
 23 property. Like express permission, the issue of “reasonable belief” is relegated to an “affirmative  
 24 defense.” Thus, the plain language of the ordinance would allow Defendants to arrest and  
 25 prosecute children for chalking a rainbow on the sidewalk in front of their home, protesters for  
 26 chalking political slogans on a temporary concrete wall built over the public sidewalk,  
 27 employees for using their employer’s word processing software, an attorney or law clerk for

1 writing a note on a legal pad belonging to co-counsel or the court, or anyone who reasonably and  
 2 innocently believes that their writing is impliedly authorized or protected by any legal right,  
 3 including the First Amendment.

4 4.31 When they asserted probable cause to arrest Plaintiffs, Defendants Jordon,  
 5 Nelson, and Patton made no mention of having reviewed or considered the affirmative defenses  
 6 of express permission or reasonable belief.

7 4.32 By its plain language, SMC 12A.08.020 sweeps within its ambit an overwhelming  
 8 degree of constitutionally protected expressions and activities.

9 4.33 Prosecutors did not charge Plaintiffs within the two-year statute of limitations for  
 10 SMC 12A.08.020 or any related offense presumably because Plaintiffs' only true crime was  
 11 criticizing the Defendants in the public forum.

12 4.34 The Defendant City enforced SMC 12A.08.020 against Plaintiffs selectively and  
 13 because of retaliatory animus.

14 4.35 The Defendant City does not apply SMC 12A.08.020 to temporary chalk or  
 15 charcoal writing that is supportive of the government or police. But for the content and viewpoint  
 16 Plaintiffs expressed on January 1, 2021, they would not have been arrested.

17 4.36 The Defendant City's long-established policy is to treat the use of sidewalk chalk  
 18 as non-criminal.

19 4.37 On March 20, 2015, the SPD's official Twitter account posted the following  
 20 response to a query from a member of the public regarding legality of politically neutral  
 21 messages written in chalk:

22 //

23 //

24 //

25 COMPLAINT - 10

26 No. [Cause Number]

27 19487.00001 ph232301

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1

2       **Tweet**

3

4       **Straight White Fail** @PatrickHiggins · Mar 18, 2015 

5      Hey @SeattlePD is it illegal to advertise events via sidewalk chalk? If so,  
6      why? If not, GREAT! #infrequentlyaskedquestions #Seattle #please    

7

8       **Seattle Police Dept.** @SeattlePD · Mar 18, 2015 

9      @PatrickHiggins is the "event," by any chance, a lemonade stand?    

10

11      **Straight White Fail** @PatrickHiggins · Mar 18, 2015 

12     @SeattlePD that could be a secondary venture! But this would be for a  
13     comedy festival.    

14

15      **Seattle Police Dept.** @SeattlePD · Mar 18, 2015 

16     @PatrickHiggins gotcha. We'll double check the municipal code and get you  
17     a final answer tomorrow    

18

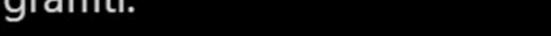
19      **Straight White Fail** @PatrickHiggins · Mar 20, 2015 

20     @SeattlePD any news on the sidewalk chalk?    

21

22      **Seattle Police Dept.** @SeattlePD 

23     Replying to @PatrickHiggins 

24     @PatrickHiggins So, we can't provide legal advice, but  
25     we can say the use of sidewalk chalk doesn't constitute  
26     graffiti. 

27

Source: <https://twitter.com/SeattlePD/status/578967302231609344>

COMPLAINT - 11

No. [Cause Number]

19487.00001 ph232301

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1       4.38 Consistent with the announcement on Twitter, images posted to the Seattle Police  
2 Foundation Facebook page suggest that Defendant City took no enforcement action against pro-  
3 police messages such as “WE ♥ SPD” chalked in public parks on July 8 and 15, 2017:



15     Source: <https://www.facebook.com/seattlepolicefoundation/photos/10155261025517419>



27     Source: <https://www.facebook.com/seattlepolicefoundation/photos/10155286250797419>

COMPLAINT - 12

No. [Cause Number]

19487.00001 ph232301

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1       4.39 Likewise, the Defendant City's police took no enforcement action against  
 2 political messages such as "LIBERTY IS ESSENTIAL" and pro-police messages such as  
 3 "DEFEND SPD" chalked during a "Back the Blue" rally at City Hall on July 15, 2020:



25       Source: <https://komonews.com/news/local/supporters-rally-outside-city-hall-to-defend-spd>  
 26 (red circle added to video still-frame to highlight individual chalking in front of SPD officers)

1           4.40    However, when members of the public chalk criticism of the government or  
 2 police, the Defendant City reacts very differently, as demonstrated by the arrest and booking of  
 3 Plaintiffs on January 1, 2021.

4           4.41    Expressing the same discriminatory animus on March 3, 2021, SPD's Lt. John  
 5 Brooks cited "SMC Property Destruction" while threatening "enforcement action" against  
 6 members of the public for chalking the public sidewalk outside of SPD's West Precinct. This still  
 7 frame image from an audio-video recording of Lt. Brooks' threat shows sidewalk chalk visible in  
 8 foreground criticizing SPD for the murder of Black and Brown Seattle residents:



4.42 This municipal policy or practice of enforcing and threatening to enforce SMC 12A.08.020 against people who express criticism of government and/or police in temporary messages written in traditional public forums on surfaces like the public sidewalk, including concrete barriers built over the public sidewalk, is chilling to free expression, tends to deter, punish, retaliate, and discriminate based on viewpoint, and is blatantly unconstitutional.

4.43 The Defendant City's policy or practice of enforcing and threatening to enforce SMC 12A.08.020 to chill, deter, punish, or retaliate against individuals like Plaintiffs is ongoing. Enforcement of SMC 12A.08.020 poses an immediate and continuing threat of repeated arrest and injury to Plaintiffs and similarly situated persons.

## **V. CAUSES OF ACTION**

## **Count One: First Amendment Violations under 42 U.S.C. § 1983**

5.1 By virtue of the foregoing, Defendants subjected each Plaintiff to selective and retaliatory arrest for engaging in protected speech, in violation of U.S. Const., amend. I, chilling and deterring each Plaintiff's protected speech. Defendants would not have arrested any Plaintiff but for their protected speech. The moving force and substantial motivating factor of each arrest was retaliation for protected speech.

5.2 By virtue of the foregoing, SMC 12A.08.020 is impermissibly vague on its face in violation of U.S. Const., amend. I, such that Plaintiffs have no notice of the conduct prohibited, chilling and deterring their protected speech.

5.3 By virtue of the foregoing, SMC 12A.08.020 is substantially overbroad on its face, in violation of U.S. Const., amend. I. On its face, SMC 12A.08.020 prohibits substantially more protected speech than necessary relative to any potentially legitimate sweep, chilling and deterring each Plaintiff's protected speech.

5.4 By virtue of the foregoing, SMC 12A.08.020 violates U.S. Const., amend. I as applied to Plaintiffs, in that Defendants' selective enforcement of the provision discriminated against Plaintiffs' viewpoint and was applied to punish and prohibit protected speech without a legitimate or compelling state interest.

## **Count Two: Fourteenth Amendment Violations under 42 U.S.C. § 1983**

5.5 By virtue of the foregoing, SMC 12A.08.020 is impermissibly vague on its face in violation of U.S. Const., amend. XIV, such that Plaintiffs have no notice of the conduct prohibited, depriving them of liberty without due process of law.

5.6 By virtue of the foregoing, SMC 12A.08.020 facially violates U.S. Const., amend. XIV, by criminalizing entirely innocent conduct regardless of Plaintiffs' intent and regardless of whether Plaintiffs reasonably believed they were expressly or impliedly authorized to make the mark, figure, or inscription alleged.

### **Count Three: Fourth Amendment Violations under 42 U.S.C. § 1983**

5.7 By virtue of the foregoing, Defendant City subjected each Plaintiff to unreasonable search and seizure, without probable cause or other justification, in violation of U.S. Const., amend. IV.

**Count Four: Monell Claim under 42 U.S.C. § 1983**

5.8 By virtue of the foregoing, the Defendant City has a pattern, practice, or policy of enforcing and threatening to enforce SMC 12A.08.020 in retaliation for protected speech, discriminating against speech on the basis of content and viewpoint, and denying Plaintiffs and similarly situated persons of liberty without due process of law. The Defendant City's policies and practices thereby violate Plaintiffs' First, Fourth, and Fourteenth Amendment rights in violation of 42 U.S.C. § 1983.

## VI. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court enter judgment and other relief against Defendants as follows:

6.1 All damages authorized by law, in amounts to be determined at trial;

6.2 A declaration that SMC 12A.08.020 violates the First and Fourteenth Amendments on its face;

6.3 A declaration that SMC 12A.08.020 violates the First and Fourteenth Amendments as applied;

1       6.4     An injunction prohibiting Defendants from enforcing 12A.08.020;  
2       6.5     Reasonable attorney fees and costs as provided by law, including under 42 U.S.C.  
3     § 1988;

4       6.6     A jury trial on all claims so triable; and

5       6.7     Pre- and post-judgment interest on any amounts recovered, to the extent  
6     authorized by law.

7                     DATED this 4<sup>th</sup> day of January, 2023.

8  
9     By: MacDONALD HOAGUE & BAYLESS     705 Second Avenue, Suite 1500  
10   Seattle, Washington 98104  
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12                     *s/Braden Pence*  
13                     Braden Pence, WSBA #43495  
14                     Email: [bradenp@mhb.com](mailto:bradenp@mhb.com)

15                     *s/Nathaniel Flack*  
16                     Nathaniel Flack, WSBA #58582  
17                     Email: [nathanielf@mhb.com](mailto:nathanielf@mhb.com)

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24                     Attorneys for Plaintiff

**UNITED STATES DISTRICT COURT**  
 for the  
 Western District of Washington

|   |   |
|---|---|
| DEREK TUCSON, ROBIN SNYDER, MONSIEREE<br>DE CASTRO, and ERIK MOYA-DELGADO           | ) |
|   | ) |
|   | ) |
|   | ) |
| <hr/> <i>Plaintiff(s)</i>   | ) |
|   | ) |
| CITY OF SEATTLE, ALEXANDER PATTON,<br>TRAVIS JORDON, DYLAND NELSON, and JOHN<br>DOE | ) |
|   | ) |
|   | ) |
| <hr/> <i>Defendant(s)</i>   | ) |

Civil Action No. 23-cv-00017-TLF

**SUMMONS IN A CIVIL ACTION**

To: *(Defendant's name and address)* CITY OF SEATTLE--  
 ALEXANDER PATTON--  
 TRAVIS JORDON--  
 DYLAND NELSON--  
 JOHN DOE--

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Braden Pence

705 Second Ave  
 Suite 1500  
 Seattle, WA 98104

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Date: 01/05/2023

CLERK OF COURT

C



*Signature of Clerk or Deputy Clerk*

Civil Action No. 23-cv-00017-TLF

**PROOF OF SERVICE***(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
 was received by me on *(date)* \_\_\_\_\_.

I personally served the summons on the individual at *(place)* \_\_\_\_\_  
 \_\_\_\_\_ on *(date)* \_\_\_\_\_; or

I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
 \_\_\_\_\_, a person of suitable age and discretion who resides there,  
 on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* \_\_\_\_\_, who is  
 designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
 \_\_\_\_\_ on *(date)* \_\_\_\_\_; or

I returned the summons unexecuted because \_\_\_\_\_; or

Other *(specify)*: \_\_\_\_\_

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ 0.00 \_\_\_\_\_.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

*Server's signature**Printed name and title**Server's address*

Additional information regarding attempted service, etc: